

198638

**BEFORE THE
SURFACE TRANSPORTATION BOARD**



STB Ex Parte No. 582 (Sub No. 1)
MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS OF AMERICAN FOREST & PAPER ASSOCIATION

David B. Hershey
Director, Transportation Policy
AMERICAN FOREST & PAPER ASSOCIATION
1111 19th Street, NW
Washington, DC 20036

By: John K. Maser, III
THOMPSON HINE & FLORY LLP
1920 N Street, NW, Suite 800
Washington, DC 20005
(202) 331-8800

Attorney for American Forest & Paper Association

May 16, 2000

**BEFORE THE
SURFACE TRANSPORTATION BOARD**

STB Ex Parte No. 582 (Sub No. 1)
MAJOR RAIL CONSOLIDATION PROCEDURES

COMMENTS OF AMERICAN FOREST & PAPER ASSOCIATION

American Forest & Paper Association ("AF&PA") hereby submits these comments in response to the Board's Advance Notice of Proposed Rulemaking in this important proceeding, pursuant to the Board's decision herein, served March 31, 2000, and published in the *Federal Register* on April 6, 2000 (65 F.R. 18021-26). The Board instituted this proceeding to provide interested persons an opportunity to comment on modifications to the Board's regulations at 49 C.F.R. Part 1180, subpart A (49 C.F.R. 1180.0-1180.9) governing proposals for major rail consolidations. Echoing concerns that AF&PA has advanced consistently in previous rail consolidation proceedings, the Board's decision implementing this proceeding states (slip op. at 4):

In today's environment – with the industry far more concentrated that it was when our current regulations were fashioned; with the prospect that any further major rail merger would trigger strategic responses that could lead to a transcontinental rail duopoly; and with only limited opportunities remaining for significant merger-related efficiency gains – the time has come for us to consider whether we should revise our rail merger policy, as many have suggested, with an eye towards affirmatively enhancing, rather than simply preserving, competition. [footnote omitted.] Moreover, with serious service concerns surrounding major rail

mergers, our rules should also address those concerns and any other areas where the public interest is involved.

AF&PA appreciates the opportunity to respond to the ANPR and to presents its views for the Board's consideration. As indicated below, the forests products and paper industry is the country's fourth largest user of rail transportation services and it is the largest user of rail boxcars. The forest products and paper industry needs a healthy and competitive rail system.

IDENTIFICATION AND INTEREST OF AF&PA

AF&PA is the national trade association of the forest products and paper industry. Its membership includes large and small forest products and paper companies, forest landowners, tree farmers and affiliated organizations. The forest products and paper industry has total annual sales of approximately \$200 billion, is among the top 10 manufacturing employers in 46 states, and generates 7% of all U.S. manufacturing output. Annually, the industry generates in excess of \$17 billion in international trade. Transportation represents between 5-25% of sales and is our third highest product cost.

The forest products and paper industry is the fourth largest user of rail transportation in the United States. Significantly, the industry's \$183 billion of domestic flows, combined with the inland portion of its international flows, makes the industry one of the largest commodity shippers in the country. Much of the industry's exports and domestic sales are transported by rail. In fact, the forest products and paper industry moves an average of 24,000 rail carloads in any given week. The industry is responsible for 70% of all railroad boxcar traffic, including 19 million tons of recycled paper, and 95% of all centerbeam lumber car traffic. The industry also represents significant carload volumes of inbound raw materials such as logs, wood chips, coal,

chemicals, and thousands of containers carrying finished goods for domestic and offshore distributions.

**THE BOARD'S CONSOLIDATION REGULATIONS SHOULD BE
REVISED SO AS TO AFFIRMATIVELY ENHANCE COMPETITION**

AF&PA believes that vigorous rail-to-rail competition is necessary for a healthy rail system. AF&PA members are concerned about the changes in the competitive dynamics of the national rail structure. The forest products and paper industry is concerned that the evolving oligopolistic national rail structure will not sustain the low-cost, efficient transportation infrastructure that is needed over the longer term to be globally competitive. The industry believes that vigorous competition between transportation providers, both within a mode and between modes, is the most effective way to ensure that needed low-cost, efficient transportation is available for the shipping public. Without competition, there is no incentive for the railroads to provide consistent service levels, improve and maintain low cost levels, nor furnish adequate supplies of quality boxcar equipment.

Competition is the proven foundation for ensuring that our nation's economy remains healthy and competitive. We believe the railroad industry should operate with those same economic incentives as any other business, including adherence to our Nation's antitrust laws.

AF&PA endorses the suggestions summarized by the Board in the ANPR and recommends that these be implemented to the maximum extent permissible under the Board's authority. These suggestions include in shortened form:

- Maintain open gateways over major interchanges on all major routings.
- Require fee for service switching for all shippers located within or adjacent to terminal areas.

- Require railroads to offer, when requested, contracts for the competitive portion of joint-line routes when the joint line partner has a bottleneck segment.
- Require railroads to provide through routes at reasonable interchange points whenever they control a bottleneck segment and the shipper has entered into a contract with another carrier for a competitive segment.
- For shippers with single carrier service, require access to an additional carrier, through trackage rights, in order to promote and enhance competition, rather than merely preserve competition.
- Support of shortline and regional railroads “bill of rights,” eliminate paper barriers, provide shipper *and* shortline rights to compensation for service failures, right to interchange and routing freedom, competitive and nondiscriminatory pricing, and fair and nondiscriminatory car supply.

COMPETITION IS A PROVEN REGULATOR OF RAIL TRANSPORTATION MARKETS

The Board must reinforce this essential principle in all its regulatory actions, to the maximum extent permissible under the Board’s authority. These actions must enable shipper and carrier interaction with little or no Board involvement. All efforts must be directed to finishing industry deregulation through the opening of market based competitive processes, as found in normal commerce, rather than creating new or added regulatory processes.

Additional market based processes should include:

- As in any procurement decision, a shipper must have a real choice in whom to do business with. Shippers with single rail service often move cargo by truck instead of rail. With rail choice, additional market share could be achieved by the rail industry. Competitive access, to an alternative rail carrier, where operationally safe and feasible, would actively stimulate, not merely protect, existing competition.
- Shipper choice should be promoted through the adoption of terminal and reciprocal switching, using the Canadian Interswitching approach as a model (a distance-based threshold). Board involvement could be limited to instances

only where the carrier and shipper could not agree on the threshold or a fair rate.

- Railroads appear to limit their focus on moving trains rather than time definite door to door services, which are commonplace in other transport modes. Third_Party Marketers should be afforded the opportunity to develop such shipper-desired solutions. An expansion of current railroad intermodal marketing practices, non-asset owning companies would provide a plethora of services while simultaneously providing incentive to the railroads to develop such services themselves.
- The Board should support an alternative means of managing rail market behavior, by the creation of common access points to create competition. AF&PA members would support access to TEA 21 funds to remove physical barriers in order to access alternative rail service, and encourage shippers to use the environmentally preferable mode of rail transportation for time definite delivery services.

CONCLUSION

AF&PA asks the Surface Transportation Board to implement these policy changes to the maximum extent permissible under the Board's authority, finish deregulation, and permit marketplace actions to promote competition. AF&PA members are unified in a call to make changes in the rail industry to promote competition and provide service levels that are adequate to serve rail customers.

We must ensure that our nation's rail system contributes to the vitality of all shippers in our economy so that our global competitiveness is maintained.

Respectfully submitted,

David B. Hershey
Director, Transportation Policy
AMERICAN FOREST & PAPER ASSOCIATION
1111 19th Street, NW
Washington, DC 20036

By:



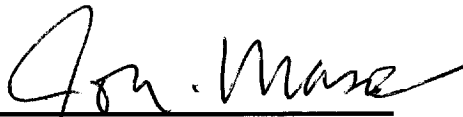
John K. Maser, III
THOMPSON HINE & FLORY LLP
1920 N Street NW, Suite 800
Washington, DC 20036
(202) 331-8800

Attorney for American Forest & Paper Association

May 16, 2000
103481

CERTIFICATE OF SERVICE

I hereby certify that on this 16th day of May, 2000, I served copies of the foregoing Comments upon all parties of record by first-class mail, postage prepaid, in accordance with the Board's order in this proceeding and with Rules of Practice.



John K. Maser III